

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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FILE: B-184071

DATE: September 25, 1975

MATTER OF: Associate Control, Research and Analysis, Inc.

**DIGEST:**

Where protester delivered hand carried proposal 21 minutes late, and cause of delay was unusual traffic on way to bid room, lateness is not attributable to improper action on part of Government and therefore proposal may not be considered for award.

Associate Control, Research and Analysis, Inc. (ACRA) protests the rejection by the Civil Service Commission of its late proposal submitted in response to Solicitation CS-RFP-43-75.

The solicitation specified that proposals would be received at the Commission until 3:00 P.M. Washington, D. C. local time, May 30, 1975. The protester's proposal was hand carried to the Commission's bid proposal depository by the company's president who arrived at the designated room for receipt of proposals at 3:21 P.M., 21 minutes late. The protester states that its president left his office in time to meet the deadline but, through no fault of his own, "was prevented from arriving before 3:00 P.M. by Metro construction on K Street which caused unusual delays in traffic."

Pursuant to Federal Procurement Regulations (FPR) § 1-3.802-1(a) (1973), the RFP contained the following provision governing treatment of late proposals:

**"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND  
WITHDRAWALS OF PROPOSALS**

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and;

"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g.,

an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

"(3) It is the only proposal received." (Emphasis added.)

Since the late proposal was not sent by mail and was not the only proposal received the Commission rejected it as late as required by the RFP provision quoted above.

Associate Control believes that discretion should be permitted in deciding whether to consider proposals submitted after the time specified in the solicitation. The protester has challenged our decision, B-135237, February 25, 1958, wherein we stated that "Obviously, there must be a time after which bids may not be received, and to permit considerations of delays in traffic, and the like, to alter or affect the fixed and exact time clearly stated in the [solicitation] would, in our opinion, tend to weaken the competitive bid system." It is argued that the rule stated in our prior decision is too inflexible and that suitable provision should be made for unanticipated delays.

With respect to late bids, the general rule followed by our Office is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. We have held, however, that a late hand carried bid may be accepted where bid lateness was due to improper Government action and consideration of the late bid would not compromise the integrity of the competitive bid system. Thus, a late bid has been deemed for consideration where delay in bid delivery was due to an inconsistency in the solicitation as to bid opening and a change in bid opening room location without the issuance of an amendment, LeChase Construction Corporation, B-183609, July 1, 1975; where a bid was timely placed in an unauthorized receptacle in an area specified by the invitation for the receipt of bids, 51 Comp. Gen. 69 (1971); and where extraordinary delay by Government personnel at a base entrance in furnishing an entrance pass caused the bid to be late. 34 Comp. Gen. 150 (1954).

Conversely, we have held that a late bid was not for consideration where the bidder's actions constituted a significant cause of the delay, such as where the bidder failed to attempt delivery

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to the proper room and failed to allow sufficient time for delivery, James L. Ferry and Sons, Inc., B-181612, November 7, 1974, and B-178984, October 30, 1973; where congested traffic and uncertainty as to the precise location of bid opening contributed substantially to the bid's late submission, V.J. Gautieri, Inc., B-181720, September 17, 1974; and where the bidder's misunderstanding of a Government representative's instructions (which caused delay) was as much the result of the bidder's actions as it was the Government representative's conduct, 47 Comp. Gen. 784 (1968).

As stated above, in those cases where we have held that a late hand-carried bid may be considered for award, we found that the lateness was due to improper Government action. While the delay here was unanticipated and caused by unusual traffic conditions, it does not appear that the lateness is chargeable to improper Government action. Rather it appears that the delay is attributable to an unforeseen circumstance which is not excusable under the late bid clause of the solicitation. Accordingly, it is our view that the protester's late proposal is not for award consideration.

  
Deputy Comptroller General  
of the United States